



**Input from the Right Here Right Now consortium to the independent expert on protection against violence and discrimination based on sexual orientation and gender identity (IE), Victor Madrigal-Borloz, for his report on data collection and management.**

Submitted to the Office of the Independent Expert by Hivos, on behalf of the Right here right now consortium, 15 March 2019.

**About Right here right now**

The Right Here Right Now (RHRN) program is a strategic partnership between Rutgers, the Asian-pacific Resource and Research Centre for Women (ARROW), CHOICE for Youth and Sexuality (CHOICE), Dance4life, Rutgers, HIVOS, International Planned Parenthood Federation Africa Regional Office (IPPF ARO), the Latin American and Caribbean Women’s Health Network (LACWHN). It aims to improve the protection, respect and fulfilment of the sexual and reproductive health and rights of young people in ten countries in Africa, Asia, Latin America and in one sub-region: the Caribbean. The countries have platforms comprised of between eight and twenty-one national organizations, each with a concerted focus on sexual and reproductive rights of adolescents and young people. Their contributions underpin this report.

**General remarks**
This report provides input for the report of the IE that elaborates on what types of data are relevant to assess violence and discrimination based on sexual orientation and gender identity; map what data are already being collected, by whom, and for what purpose; highlight key human rights safeguards that must be taken into consideration when collecting and using data; and formulate recommendations to States and other relevant stakeholders.

In relation to the question for what purpose data are being collected, it should be noted that while there is always a role for improved counting in developing better policy measures for any issue, it is not necessarily obvious that more data will lead to an improved policy and state approach to protecting LGBTI communities. Existing evidence is already willfully ignored by many countries. A cultural context of a specific country also affects the way state policy is shaped and dogma, superstition and cultural stereotypes are rarely mitigated by evidence.

When discussing dispelling myths, stigma and discrimination, we are touching upon cultural behavioral change. To better understand these issues, the focus of data collection should not only involve LGBTI communities, but also the broader population. Considering the abovementioned, besides counting and registering cases of discrimination, it is important to understand the cultural drivers of stigma and hate speech. It would be well advised to collect data on these cases too, for example through social media listening and semantic text analysis of online discourse.

**Answers to the questions**

1. *What are the current efforts by States to increase their knowledge of the LGBT population? Specifically, are questions about sexual orientation and gender identity included in government surveys (e.g. the census, national health surveys, income and living condition surveys, or other surveys funded or mandated by the State), administrative records (e.g. birth certificates/birth registries, identity Cards, school records, professional licenses, social security and public benefit records, and other government documents)?*

**Kenya**

The Births and Deaths Registration Act, the Registration of Persons Act, and the Citizenship and Immigration Act, key legislation that provide for the issuance of birth certificates, national identification cards and passports, fail to adequately provide for intersex persons as well as persons who wish to change their gender marker in government issued documentation. This harms the effort to collect information. Several cases filed in court have shaped the recognition (the Case of RM v the Hon. Attorney General [2010], Petition 705 of 2007 (RM Case); the case of Baby ‘A’ (Suing through the Mother E A) & another v Attorney General & 6 others (2014) eKLR (Baby A‘ Case); the Republic v Kenya National Examinations Council & another Ex-Parte Audrey Mbugua Ithibu (2014) eKLR (Audrey Mbugua Case); and in 2017 the High Court of Kenya ordered the Principal Registrar of Persons to effect the name changes of 5 transgender persons in their identity documents after the office‘s repeated failure to do so).

The Kenya National Commission on human Rights has conducted several studies on SOGIE and issued recommendations to government of Kenya. In its landmark 2018 report titled Equality In Dignity and Rights: Promoting the Rights of Intersex Persons in Kenya, the Kenya National Commission on Human Rights (Kenya‘s national human rights institution), highlighted the effects of pathologization of intersex persons to include genital mutilation

The pathologization of transgender persons is a key impediment to their enjoyment of rights under Kenya‘s 2010 Constitution. Kenya does not have any laws or policies providing for medical procedures aimed at conforming a transgender person‘s physical appearance with their gender identity. The lack of these laws and policies is both a cause and effect of the violence and discrimination that transgender persons experience.

**Honduras**

In Honduras there are no censuses that reflect the conditions in which LGTBI people live. A reason for this is that, in the case of for instance access to health, LGTBI people have little or no access to these services. The state does not offer services that reflect the living conditions of LGTBI people. In the last months a proposal has been presented to deputies of different political parties to reform the law on the National Registry of the People, so that the identity card does not contain the word ‘sex’ anymore, since this harms the expression and the identity of trans people. The amendment aims to change the articles 43 and 77, paragraphs A, B and C.

The Honduran State does not recognize the identity and gender expression of trans people, therefore they are not represented in administrative records such as driver's license, birth records, school records and professional licenses.

**Nepal**

In Nepal, there has not been enough scientific study regarding data of sexual and gender minorities. Some data are available on HIV and AIDS prevalence among MSM (Men Having Sex With Men) and transgender people in Nepal. The overall prevalence of HIV among MSM-TG is 6.2 percent. Compared to the previous year 2015, the prevalence of HIV has increased by 3.8 in the case of the MSM-TG group. This data is collected by National Center for AIDS and STDs control via integrated bio behavioral surveys. There are also data available on sexual and gender minorities along with size estimation data that have been collected in a HIV and AIDS prevention program for MSM and TG in Nepal. There is also size estimation data available of MSM and the TG population regarding HIV and AIDS interventions. The national estimates of MSM/TG range from 87,861 to 111,881 out of which 18,710 to 24184 are transgender; 15,941 to 20,625 are male sex workers (MSW), and 53210 to 67,072 are other MSM. In the census of 2011 data of transgender has not been disseminated.

**Caribbean**

In the Caribbean, questions about sexual orientation and gender identity are included in government surveys (like the census, national health surveys), administrative records (birth registries, identity cards). The police, however, does not register violence against LGBTI-people as anti-LGBTI violence. It is never mentioned that crimes are being perpetrated against LGBTI-persons, because of them part of the LGBTI community. Only when LGBTI civil society organizations refer to the crimes as hate crimes it gets known. If, for example, a young male was murdered, we only get to know from an organization the apparent attacker was harassing him because he was gay, but not from a police report. This is important information, because how can we deal with the problem if it is not highlighted? If we don’t know there is a problem? It should be registered as a hate crime.

1. *What kinds of data can be collected by government to understand the nature and extent of violence (e.g. through statistics on LGBT-phobic hate crimes and hate speech), discrimination, and disparities in health, education, labour, civic participation, and other important areas?*

**Kenya**

To better plan for LGBTI it is important that from birth the government collects data on the number of intersex children and keeps the records of transgender people to be able to plan for them.

**Honduras**

If the Honduran State would collect information through the National Institute of Statistics (INE) about the violence that LGTBI people experience, this would have to start with the recognition by the state of the gender identity and expression. This includes access to education, health, work and justice and the participation of LGTBI people in electoral processes. CSO’s would then expect the Honduran State to counteract violence against LGTBI people and hate speech by establishing safeguarding measures and specific protocols.

**Caribbean**

Research could be done on police data (, security, surveys in the health sector (hospitals). We need more efficient and effective ways to register hate crime against the LGBTI community, because if the community would not mention it, this information would be lost in statistics. The same goes for health: generally people are registered as male or female, not as trans. Because there is no state interest to collect this type of data since homosexuality is illegal in the Caribbean, there is no incentive to collect primary data. There are no statistics, no trends to be analyzed. Research is only done by civil society on this topic. How can we then determine if there is improvement in the environment when it comes to lived realities of LGBTI-people.

In Trinidad we see how data collection has helped us. The collection now is possible, because same sexual activity is now legal, so they can collect data on hate crimes and, on various aspects of the LGBTI-community, which they couldn’t do before. So state agencies now have to cooperate and can’t say they promote illegality if they work on these figures. If you want to know HIV-prevalence, that is important information.

1. *What safeguards are in place, and what safeguards are needed, to protect the human rights of individuals providing personal data as well as individuals collecting such data? This question includes the following:*
	1. *Safeguards to protect the privacy of individuals who provide data about their sexual orientation/gender identity, and the confidentiality of the data provided by these individuals.*

If research is being done, this should of course be anonymous. The anonymity of respondents should be enforced and confidentiality respected by the researcher. Ideally we should move beyond that, people should not have to hide, but for starters safety comes first.

* 1. *Broader statutory rules or administrative policies to insure transparency and accountability of government institutions such as statistical bodies.*

**Honduras**

In Honduras there is no mechanism that guarantees the recognition of LGTBI-people, since the Honduran State does not offer instances, forms or safeguards for LGTBI persons. There are no standards that specify the safeguarding of LGTBI-persons.

1. *What are the risks associated with the collection and management of data on sexual orientation and gender identity and initiatives to overcome those?*

It is key to know who collects the data. What systems are they stored on? When using algorithms, what are they based on? Who has access to that data? If homosexuality would be decriminalized, one of the root causes underlying these risks would be taken away. Furthermore we need systems in place that ensure checks and balances. Also think of the use of “metadata”; even if you provide information anonymously, with a lot of data combined, you can be exposed as an individual and you will be de-anonymized.

**Kenya**

The Penal Code still criminalises same sex sexual relationship among two consenting adults, these means that there are high risks of police harassment and arrests, attacks by members of the public.

**Honduras**

From the Honduran State there are no initiatives aimed at collecting data for LGTBI-people. CSO’s, however, are working on a law on equality and equity in which 10 vulnerable groups are included (children, girls and adolescents, youth, women, elderly people, migrants, deprived of liberty, defenders, people with disabilities, people with HIV and LGTBI people). The law is designed to create an anti-discrimination culture, to promote peace processes in Honduras, within the framework of respect for individuals.

**Nepal**

Possible risks when collecting and using data related to sexual orientation and gender identity and key human rights safeguards that must be taken into consideration are: breaching confidentiality, risk of possible violence and harassment from state and none state actors, misuse and misinterpretation of the data, risk of not having enough data, difficulty in reaching out to communities that are less visible.

**Caribbean**

The greatest risk is hacking of data sites with data collected by the government and individual researchers not maintaining confidentiality.

1. *Are there circumstances where data collection is ill-advised, such as in countries that criminalize same-sex behavior or where particular government agencies have demonstrated a cause for concern regarding their treatment of issues related to sexual orientation and gender identity?*

Counting means identifying. Usefulness of a dataset grows in parallel with the detail it captures. However, the intention behind counting is the critical component here: the same datasets can be used for purposes of support, awareness, and protection, as well as for surveillance, targeted aggression and discrimination. In countries that criminalize same-sex behavior, the dangers may trump positive effects. Responsible data policies and approaches are crucial for the protection of communities from unintended or negative consequences. However, when discussing state actors, responsible data policies won’t be able to mitigate risk — since the people who do the counting are the people who criminalized same-sex behavior.

**Kenya**

As stated above this information could be misused by state agencies like the police to harass the LGBTI-members. So far in Kenya the Ministry of Education works with the community (Key Populations, particularly MSM) and so far there hasn’t been any complaints of exposure.

**Honduras**

Honduras by its constitution prohibits equal marriage and establishes that people who can adopt are only married heterosexuals. The President of the Republic has said that Honduras is a country of great faith and that therefore equal marriage is impossible, these words were expressed after two men (Alex Eduardo Sorto Ortiz and Donny Ramón Reyes) appealed a resource of unconstitutionality on two articles of the Constitution of the Republic that prohibit Equal Marriage. Similarly, the Secretary of Education Arnaldo Bueso has expressed concern about the appeal of unconstitutionality on Equal Marriage. This creates an environment in which collecting data freely and safely is difficult.

**Caribbean**

In the region government agencies deem homosexuality illegal. We can’t trust them with information, because they have no legal requirements to protect you. That should happen first. If a LGBTI-community provides information and this is breached, the parties suffering from the breach should be able to take action.

1. *When States engage in data gathering activity, to what extent is civil society able to meaningfully participate in the design and implementation of these programs?*

In order to design and implement responsible and safe data collection, we need to delegate counting responsibilities to those organizations whose intent aligns with responsibility and safety. Civil society can play a critical role in acting as protector and data broker between LGBTI communities and state actors. This is important both when state actors are actively persecuting LGBTI communities (to protect), as well as in countries with neutral or positive policies (to act as watchdog and critical friend). This would require international pressure towards countries at risk to both delegate the counting role to civil society, and commit to truthfully implement policy based on the collected data.

*This question includes the following:*

* 1. *Do states have policies that guide the process of civil society participation national statistical programs and other State efforts to increase knowledge about LGBT populations?*

**Kenya**

There is no known policy on participation, however, the constitution provides for the general public participation in public matters and policy development.

**Honduras**

The Honduran state does not have any program aimed at collecting specific data on LGTBI people. But on some issues CSO’s ask for, there is support from the Human Rights Secretariat, the Ministry of Development and Social Inclusion (SEDIS) and the Office of the Presidential Designee Olga Alvarado.

**Caribbean**

Because homosexuality is illegal in certain Caribbean countries, research on LGBTI-related topics is largely undertaken by civil society with funding generally from international donors.

* 1. *Does civil society have the capacity, in terms of expertise and technical knowledge, to meaningfully participate in State efforts to gather data?*

**Kenya**

There is need to enhance the capacity of CSO’s in matters SOGIE as base for them to churn out research and generate more data in the area. Sometimes even mainstream human rights organizations struggle when confronted with a question on the topic. LGBTI organizations need capacity to be able to meaningfully participate because a majority of these organization cannot get legal registration due to criminalization and their organizing is very difficult and still informal.

**Honduras**

CSO’s have the talent and the competencies to develop processes to collect data. Their capacities can be used to generate processes of development and data collection of LGTBI persons by the Honduran State.

**Caribbean**

Yes, there are LGBTI-organizations with the capacity to undertake research in the Caribbean.

* 1. *What constitutes meaningful participation in this area?*

Involving youth, involving data of all different communities that make up the LGBTI community, making sure data is geographically covered. Ensuring the safety and security is guaranteed when collecting data, creating a safe space to express oneself so there is equal representation of all target groups.

**Kenya**

Involvement of LGBTI in determination of all issues affecting them, ensuring that policies are developed with input of LGBTI. For instance: when researching on the impact of sex normalizing treatment on intersex Kenyans. The study should include intersex people of various age groups and include both people who have and have not received normalizing surgery as children. It simply means that those experiencing an issue first hand must inform any discussion around it.

**Honduras**

To carry out this strategy, it would be necessary to develop synergies with the CSO’s that work with the LGTBI population, starting from the efforts that the Honduran State can make to establish records of the realities that LGBTI-people experience due to their gender identity and expression.

**Caribbean**

An adequate stakeholder mapping to ensure the various civil society organizations are represented in every research. In various cases, allow qualified researchers with knowledge of the LGBTI environment to conduct and be part of the research.

1. *Does the lack of a global classification scheme carry risks that data will not be useful for international comparisons or will not accurately reflect the identities and lived realities of local populations?*

This question assumes that international comparisons are important to solving issues on the ground. Arguably, international comparisons matter more for international fora, and less for local issues. From a civil society perspective, supra-state comparability is a secondary priority result: beneficial if it is there, but not a primary driver of projects. People may not identify as ‘gay’ or ‘transgender’ and use different words in their own language. This of course influences the understanding of the reality. But the latter – knowing what is going on – is more important than whether we can compare well at international level (although that is important too).

**Honduras**

The production of data that reflect the reality of the LGTBI population will allow us to know what their needs are.

**Caribbean**

Ensure that the research captures the lived realities of the LGBTI community per region. Researchers with knowledge of the local LGBTI community that are capable of conducting research based on international standards should be hired as researchers.

**Nepal**

Recommendations to States and other relevant stakeholders: more research is needed and investments should increase, with a clear research agenda, maintaining confidentiality at all times upon request and if needed.